

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY 4 D.C.
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THOMAS L. COULD
CLERK U.S. DISTRICT COURT
W.D. OF TENN. JACKSON

CELIA GOLLIVER, Next of Kin of
JAMES MCMILLEN, Deceased,

Plaintiff,

VS.

No. 05-1343-T/An

URE AGADAGA, Administrator of the
Estate of CHIKERE AGADAGA, M.D.,
Deceased; JOHN D. FREEDMAN, M.D.,
and MERCK & CO., INC.;

Defendants.

ORDER FOR DEFENDANT TO RESPOND TO MOTION TO REMAND

Plaintiff Celia Golliver, the next of kin of the decedent, James McMillen, filed this wrongful death action in the Circuit Court of Hardin County, Tennessee, on or about September 30, 2004. Plaintiff asserted claims of medical malpractice against various health care providers, including Chikere Agadaga, M.D., John D. Freeman, M.D. and Hardin County General Hospital, for the alleged failure to properly diagnose and treat the decedent for the heart attack which caused his death. Following the announcement by Merck and Company, Inc., maker of the prescription drug known as Vioxx, that it was withdrawing Vioxx from the market, plaintiff filed an amended complaint September 27, 2005, adding Merck as a defendant.

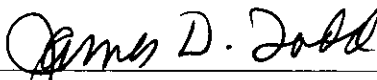
Merck removed the action to this Court on November 4, 2005, on the basis of diversity of citizenship, contending that it was fraudulently joined in the pending state court action in an attempt to defeat diversity jurisdiction. Also on November 4, 2005, Merck filed a motion to stay all further proceedings pending a decision by the Judicial Panel on Multidistrict Litigation (“MDL Panel”) on whether this case should be transferred to the United States District Court for the Eastern District of Louisiana as a “tag-along” action in MDL Proceeding No. 1657, In re Vioxx Product Liability Litigation. Plaintiffs filed both a response to the motion to stay and a motion to remand the action to state court on November 22, 2005.

In most of the Vioxx cases filed in this district against Merck, the state court complaint was filed against Merck and various non-diverse defendants such as prescribing doctors, pharmacists and Merck sales representatives, simultaneously. Thus, the fraudulent joinder issues were similar in each case. It has been the practice of the Court in such cases to grant a stay pending transfer to the MDL proceeding and to defer any motion to remand to the transferee court without waiting for a response from Merck.

This case, however, involves a medical malpractice case that was pending in state court for approximately a year before an amended complaint was filed adding Merck as a defendant. Thus, the issue of whether Merck was properly joined in this action is substantially different from most of the other Vioxx cases and requires a response to the motion to remand from Merck.

Accordingly, Merck is hereby ORDERED to file a response to plaintiff's motion to remand within fifteen days after the entry of this order.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 10 in case 1:05-CV-01343 was distributed by fax, mail, or direct printing on December 1, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT